

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**10/08/20  
10:08 AM

October 8, 2020

**Agenda ID #18850**  
**Ratesetting**

TO PARTIES OF RECORD IN APPLICATION 19-07-005:

This is the proposed decision of Administrative Law Judge Gerald Kelly. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's November 19, 2020 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4)(B).

/s/ ANNE E. SIMON  
Anne E. Simon  
Chief Administrative Law Judge

AES:gp2  
Attachment

Decision **PROPOSED DECISION OF ALJ KELLY (Mailed 10/8/2020)**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of  
California-American Water Company  
(U210W) for an Order Authorizing  
and Imposing a Moratorium of Water  
Service Connections in the Laguna  
Seca Subarea on its Monterey County  
District.

Application 19-07-005

**DECISION ADOPTING THE PROPOSED SETTLEMENT AGREEMENT**

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### Appendix A – Settlement Agreement

## **DECISION ADOPTING THE PROPOSED SETTLEMENT AGREEMENT**

### **Summary**

This decision grants the joint motion of California American Water Company (Cal-Am) and Monterey Peninsula Water Management District for adoption of the Settlement Agreement<sup>1</sup> and resolves all issues in the scope of this proceeding. This decision rejects the request of Joseph P. Lucido to reject or change the Settlement Agreement. This proceeding is closed.

### **1. Background**

California American Water Company (Cal-Am) filed the Application in this proceeding on July 2, 2019, for an order authorizing and imposing a moratorium on water service connections in the Laguna Seca Subarea of its Monterey County District (Application) to comply with the withdrawal limitations set by the Seaside Groundwater Basin Adjudication. Cal-Am proposed that the moratorium would apply to new or expanded water service connections until the existing moratorium on the Monterey Main System expires.

On July 22, 2019 Cal-Am mailed notice of this Application to (1) all of its Laguna Seca Subarea customers, and (2) to Laguna Seca Subarea property owners that are not current Cal-Am customers, but for which Cal-Am had an address, notifying them of the proposed moratorium.<sup>2</sup> Prior to filing the Application, Cal-Am invited representatives from several Homeowner Associations in its Laguna Seca Subarea to a presentation at its offices to discuss this Application and the requested relief. A representative from County Supervisor Mary Adams's office attended the meeting. Three representatives

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<sup>1</sup> The Settlement Agreement is attached to this decision as Appendix A.

<sup>2</sup> Newspaper notices also appeared in the Monterey Herald and Carmel Pinecone on July 18 and July 19, 2019, respectively.

from Monterey Peninsula Water Management District (MPWMD) were also present.

On August 7, 2019, MPWMD filed a Protest, and on October 30, 2019, MPWMD served testimony challenging the need to implement a moratorium. On August 29, 2019, a prehearing conference took place. Following the prehearing conference, on September 18, 2019, a Scoping Ruling was issued which set forth a schedule for future testimony, hearings, and briefing. On October 30, 2019, Joseph P. Lucido<sup>3</sup> (Lucido) filed a motion for party status and served testimony, which also challenged the need for a moratorium. On December 9, 2019, the Commission held a public participation hearing in Seaside.<sup>4</sup>

On May 12, 2020, Cal-Am and MPWMD (collectively the Parties) filed a joint motion for adoption of the Settlement Agreement between them. On May 20, 2020, Cal-Am and MPWMD also filed a joint motion to admit the testimony and exhibits into the record in this proceeding which is granted by decision and addressed in Section 7 of this decision. On June 4, 2020, Lucido filed a response to the Settlement Agreement, which generally argued that the Commission should reject the Settlement Agreement.

### **1.1. Events Prior to the Moratorium Application**

In August 2003, Cal-Am filed a complaint in Monterey Superior Court, Case No. M66343, seeking appointment of a Watermaster and adjudication of the

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<sup>3</sup> Lucido was originally represented by attorney Christine Hemp in this matter. However, on May 21, 2020, Ms. Hemp indicated that she was no longer acting as Lucido's attorney and that he would be representing himself for the remainder of this proceeding.

<sup>4</sup> Multiple customers attended the public participation hearing and stated an objection to the moratorium application. The major concerns were that if the moratorium were granted that the customers would be unable to expand their residences or install a pool and they expressed that this might have a negative impact on their property values.

groundwater rights for the Seaside Groundwater Basin (Basin) on the basis that use was exceeding replenishment and there was an imminent risk to water supply and quality.<sup>5</sup>

In February 2007, the Superior Court issued the Amended Decision, finding that Basin pumping must be reduced over time to avoid adverse Basin impacts. The Basin has two subareas: Coastal and Laguna Seca. For Cal-Am and other producers, this Amended Decision required reduction in Basin production over a fifteen-year period to prevent seawater intrusion.<sup>6</sup> The following table shows the Seaside Groundwater Basin Allocation for Water Years 2006-2026.

California American Water Share (AFY)<sup>7</sup>

Water Year	Coastal Subareas (AF)	Laguna Seca Subarea (AF)
2006-2008	3,504	345
2009	3,191	271
2010-2011	3,087	246
2012-2014	2,669	147
2015-2017	2,251	48
2018-2020	1,820	0
2021-2023	1,494	0

As shown above, the mandatory reductions reduced Cal-Am's authorized pumping allocation for the Laguna Seca Subarea to zero in 2018. The Amended Decision requires a producer to pay replenishment assessments for any water

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<sup>5</sup> *Direct Testimony of Christopher Cook*, dated July 2, 2019 (Cook Direct), pp. 5-6, Q/A 14.

<sup>6</sup> Cook Direct, p. 6, Q/A 15.

<sup>7</sup> Cook Direct, p. 7, Q/A 17.

produced more than its base water right (*i.e.* its share of the natural safe yield) but within its share of the operating yield.<sup>8</sup>

On July 1, 2016, Cal-Am requested a moratorium on service connections in the Laguna Seca Subarea in Application (A.) 16-07-002, the Company's general rate case (GRC) application for test year 2018, which request was supported by MPWMD. In Decision (D.) 18-12-021, the Commission found that Cal-Am failed to provide sufficient notice of the moratorium to its customers and did not explain why it could not rely on payment of replenishment assessments to the Watermaster or through importation of non-native water to the Seaside Basin.<sup>9</sup> The Commission concluded that Cal-Am may renew its moratorium request in a new application or in its next GRC if it provides appropriate notice to potentially affected customers.<sup>10</sup> Cal-Am renewed its request when it filed this Application.

## **1.2. Watermaster Recommendations**

The testimony in this proceeding reflected differences in opinion on how to interpret the Amended Decision.<sup>11</sup> On November 12, 2019, Cal-Am, with the agreement of MPWMD and Lucido, requested an extension of the procedural schedule to allow time to raise certain issues regarding the interpretation of the Amended Decision before the Seaside Basin Watermaster's Technical Advisory Committee (TAC). The request was granted, and on January 8, 2020, Cal-Am presented the following plan to avoid a moratorium to the TAC:

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<sup>8</sup> Cook Direct, p. 10, Q/ A 22.

<sup>9</sup> D.18-12-021, *Adopting the 2018, 2019, and 2020 Revenue Requirement for California-American Water Company*, dated December 13, 2018, p. 24.

<sup>10</sup> *Id.*

<sup>11</sup> Cook Direct, pp. 9-10; Direct Testimony of Jonathan Lear, dated October 30, 2019 (MPWMD) (Lear Direct), pp. 4-5.

1. In a normal year with Aquifer Storage and Recovery water available, Cal-Am will pump groundwater from the Coastal Subbasin and deliver that groundwater for use in the Laguna Seca Subbasin, consistent with Section III.M.3.a., pp. 42-43 of the 2007 Amended Decision. Specifically, once the Main System/Ryan Ranch intertie project is complete in Fall 2020, Cal-Am will supply the Ryan Ranch and Bishop service areas with water produced from the Coastal Subarea of the Basin, consistent with Cal-Am's allocation for the Coastal Subarea.
2. Cal-Am will use its Standard Production and Carryover from its Laguna Seca Sub-basin allocation to meet or offset its Hidden Hills pumping. In the CPUC moratorium proceeding, the MPWMD recognized that Cal-Am is entitled to unproduced Alternative Production originating in the Laguna Seca Subarea, and may use that water to meet or offset Cal-Am's Laguna Seca pumping.<sup>12</sup>

Cal-Am requested concurrence from the TAC that (1) the plan is consistent with the Amended Decision and will not harm the Basin because while Cal-Am's initial annual allocation is at zero, (2) Cal-Am may pump groundwater from the Coastal Subbasin and deliver that groundwater for use in the Laguna Seca Subbasin, and (3) there is sufficient unproduced Alternative Production in the Laguna Seca Subbasin for Cal-Am to meet or offset its Hidden Hills pumping.<sup>13</sup> The TAC discussed the plan at length and addressed issues specific to Hidden Hills raised in correspondence by Lucido.<sup>14</sup> The TAC determined that it should weigh-in on the technical issues and defer to the Board on the issues involving

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<sup>12</sup> Exhibit B, Declaration of Robert S. Jaques (Jaques Declaration), p. 20. The Attachments A, B, and C to the declaration of Mr. Jaques are all officially posted meeting notices and agendas of the Seaside Groundwater Basin Watermaster. They are posted to the Watermaster's website at: <http://www.seasidebasinwatermaster.org/sbwmARC.html>.

<sup>13</sup> Jaques Declaration, Attachment A, pp. 20-21.

<sup>14</sup> Jaques Declaration, Attachment B, pp. 27-28, Attachment C, p.4.



interpretation of the Amended Decision.<sup>15</sup> The TAC unanimously agreed there were no adverse impacts associated with Cal-Am's planned schedule for phasing out its pumping from Laguna Seca, and that continued pumping at current rates until the intertie to Cal-Am's Main System is constructed is an interim condition that would not necessitate imposing a moratorium on new or expanded service in the Laguna Seca Subarea.<sup>16</sup>

On February 5, 2020, Cal-Am presented its plan to the Seaside Basin Watermaster's Board of Directors (Board). Lucido also presented remarks to the Board.<sup>17</sup> Following much discussion, the Board unanimously agreed to four findings, including that no adverse impacts are associated with Cal-Am's plan and that the Amended Decision permits over-pumping of its allocation, subject to replenishment assessments, without differentiation as to production in Laguna Seca versus the other subareas.<sup>18</sup>

## **2. Settlement Discussions Between the Parties**

Cal-Am could have continued to pursue its instant Application. However, there are inherent risks associated with litigation. Rather than continue with its Application, Cal-Am engaged in settlement discussions.

In February and March 2020, following the Watermaster presentation, Cal-Am and MPWMD engaged in discussions to develop terms of a potential settlement to resolve the need for a moratorium. Cal-Am and MPWMD eventually reached a consensus on terms. Cal-Am served notice of an all-party settlement meeting on April 7, 2020 and provided Lucido with a copy of the

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<sup>15</sup> Jaques Declaration, Attachment B, p. 28.

<sup>16</sup> Jaques Declaration, Attachment B, p. 28. *See also* Settlement Agreement, Recital 5.

<sup>17</sup> Jaques Declaration, Attachment B, pp. 30-36. *See also* Settlement Agreement, Recital 6.

<sup>18</sup> Jaques Declaration, Attachment B, p. 27. *See also* Settlement Agreement, Recital 6.

proposed terms. The all-party settlement meeting was held telephonically on April 14, 2020.

Based upon their settlement discussions, Cal-Am and MPWMD were able to resolve all issues raised in this proceeding and identified in the Scoping Ruling issued on September 18, 2019.

### **2.1. Settlement Agreement Summary**

The Settlement Agreement acknowledges the Parties' agreement that the Amended Decision provides for producers to over pump their allocation by levying a Replenishment Assessment (RA) on the amount of such over pumping and Cal-Am can over pump its allocation basin-wide, subject to the RA, with no differentiation as to production in the Laguna Seca Subarea versus the other subareas. The Parties also acknowledges that the Parties are not aware of any adverse impacts associated with the planned schedule for phasing out pumping from the Laguna Seca Subarea and do not object to it. Furthermore, it acknowledges that Cal-Am's continued pumping from the Laguna Seca Subarea at current rates until the interties to Cal-Am's water main system are constructed is an interim condition that would not necessitate imposing a moratorium on new or expanded service in the Laguna Seca Subarea at the present time.

In the Settlement Agreement, the Parties agree, *inter alia*, that in lieu of the instant Application seeking authorization for moratorium, Cal-Am will pursue the following<sup>19</sup>:

- In a normal year with aquifer storage and recovery water available, Cal-Am agrees to pump groundwater from the Coastal Subbasin and deliver the groundwater for use in

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<sup>19</sup> The following is a summary of the Settlement Agreement. For complete terms set forth in the Settlement Agreement, see Exhibit A attached to the Motion for Adoption of the Settlement Agreement dated May 12, 2020. The Settlement Agreement is also attached to this decision as Appendix A.

the Laguna Seca Subbasin consistent with the Amended Decision.

- Once the Main System/Ryan Ranch intertie is complete Cal-Am agrees to supply the Ryan Ranch and Bishop service areas with water produced from the Costal Subarea of the Basin, consistent with Cal-Am's water allocation for the Central Coast.
- Cal-Am agrees to use its Standard Production and Carryover from its Laguna Seca Sub-basin allowance to meet or offset its Hidden Hills pumping.
- Cal-Am agrees to (1) undertake certain conservation activities as part of the Settlement Agreement which includes promoting Cal-Am's and MPWMP's existing joint rebate program with an emphasis on turf removal, (2) conduct a joint workshop with MPWMD for Cal-Am's Laguna Seca customers focused on irrigation and efficient outdoor water use, (3) place signage rings on its fire hydrants in the Laguna Seca Subarea, (4) promote its Water Wise House Call program to its Laguna Seca customers, and research and remediate why non-revenue water percentages in its Lagun Seca Subarea are higher than its Monterey Main System.

Finally, the Parties note that nothing in the Settlement Agreement prevents Cal-Am from seeking authorization from the Commission to impose a moratorium in the Laguna Seca Subarea in the future.

### **3. Objection to the Settlement Agreement**

On June 4, 2020, Lucido filed a Response to the Settlement Agreement (Response). Lucido declined to join the Settlement Agreement because he contends the Settlement Agreement only avoids a moratorium at this time.<sup>20</sup>

The Response sets forth Lucido's argument that the Settlement Agreement should be modified and a new settlement drafted to include a long-term plan to

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<sup>20</sup> See, Lucido's Response to the Settlement Agreement at 2.

avoid future moratoriums of all three Subareas of the Laguna Seca Subarea.<sup>21</sup>

The Response also alleges that the Settlement Agreement is not reasonable because it contends that there were facts<sup>22</sup> that were allegedly not fully disclosed.

Specifically, the Response asserts the following.

- Differentiation of Water Systems<sup>23</sup> – the response alleges that Cal-Am did not disclose that the Laguna Seca service area consists of three different systems (Ryan Ranch, Bishop, and Hidden Hills) and that the interconnection between Ryan Ranch and the Monterey Main system, which will allow Cal-Am to reduce production in the Laguna Seca Subbasin, will not serve Hidden Hills.
- The Toro Intertie – Hidden Hills<sup>24</sup> – the Response alleges the feasibility of Cal-Am using the emergency intertie between Toro and Hidden Hills to avoid a moratorium has not been presented in detail.
- The Monterey Main – Bishop – Ryan Ranch intertie<sup>25</sup> – the Response implies there is an inconsistency between Cal-Am proposing both the Ryan Ranch intertie project and a moratorium in the Application and reaching a settlement that includes the Ryan Ranch intertie but avoids a moratorium.
- Access to water from Carmel River Source Prior to Lifting the Cease and Desist Order<sup>26</sup> – This portion of the Response appears to contend that the Settlement Agreement is unreasonable because it does not explain why the intertie between Ryan Ranch and the Monterey

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 3-5.

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 4.

<sup>26</sup> *Id.*

Main system is proceeding before the intertie between Hidden Hills and the Monterey Main System.

- Laguna Seca Subarea Conservation<sup>27</sup> – The Response states that the Application failed to state that Bishop, Ryan Ranch and Hidden Hills have made significant efforts to conserve in recent years in Cal-Am’s Application.

The Response then calls into question whether the Settlement Agreement is consistent with the law and in the public interest.<sup>28</sup> Specifically, the Response makes the following arguments:

- Standard Production Allocations and Carryover<sup>29</sup> – The Response asserts that the Settlement Agreement does not address the fact that in Water Year (WY) 2021 Cal-Am’s Standard Production Allocation for the Coastal Subarea will be reduced from 1792 Acre-feet per year (afy) to 1494 afy. The Response goes on to state that Cal-Am’s Laguna Seca Subarea Standard Production Allocation is currently zero afy. With the further 298 afy reduction in Cal-Am’s Standard Production Allocation for the Coastal Subarea, the Response contends that Cal-Am’s Standard Production Allocation Basin-wide from WY 2021 can be expected to be significantly less than in recent years.
- Overproduction after WY 2020<sup>30</sup> – The Response alleges that based on Cal-AM’s Basin-wide production from WY 2017 through 2019, the average Cal-Am production for the Coastal Subarea and Laguna Seca Subarea is approximately 2126 afy. The Response goes on to state that both Cal-Am’s Standard Allocation and carryover will most likely be less in years after WY 2020 and Cal-Am will most likely overproduce the Basin in future years. If the carryover goes to zero, then Cal-Am overproduction Basin-

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<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Id.* at 5-6.

<sup>29</sup> *Id.* at 5.

<sup>30</sup> *Id.* at 6.

wide would reach 632 afy at current rates and the sole remedy for overproduction is the remittance of replenishment assessment fees.

- Aquifer Storage and Recovery (ASR) Future Water Projections Not Thorough<sup>31</sup> - The Response contends that the history and future projections of ASR water availability to serve only Bishop/Ryan Ranch, after cessation of pumping from the Laguna Seca Subarea Basin, have not been thoroughly presented for pumping from the Coastal Seaside Basin. It goes on to assert that Cal-Am did not provide any documentation to show that there is sufficient ASR to meet or offset pumping in the Laguna Seca Basin in future years.

The Response also alleges that the plan to avoid a moratorium set forth in the Settlement Agreement was not recommended or approved by the Watermaster. The Response goes on to provide various suggestions for things to be included in a future settlement agreement regarding the instant Application,<sup>32</sup> which includes a requirement to provide a schedule for phasing out pumping from the Laguna Seca Subarea and that the term “current rates” should be based on an average production rate over three to five years rather than one year.

#### **4. Joint Reply Comments on Lucido’s Response to the Settlement Agreement**

On June 26, 2020, Cal-Am and MPWMD filed joint reply comments on Lucido’s Response to the Settlement Agreement. Cal-Am and MPWMD assert that Lucido’s Response lacks merit and contend that the Settlement Agreement is supported by the record. The joint reply goes into each of the alleged facts that Lucido contends was not set forth in the Application, as follows:

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 7-8.

- Differentiation of Water Systems – the Joint Parties assert that Lucido’s allegations are false and that testimony and additional documents submitted with the Settlement Agreement describe all the water systems.<sup>33</sup>
- Toro intertie and Hidden Hills – the Joint Parties assert that Lucido’s allegations as it relates to the Toro intertie and Hidden Hills are false.<sup>34</sup> Further they note that Attachment A to Lucido’s Response reflects that Lucido was informed at a Watermaster Board meeting why the Toro intertie is not a solution.<sup>35</sup>
- Monterey Main – Bishop – Ryan Ranch intertie – The Joint Parties note that Lucido implies there is an inconsistency between, on the one hand, Cal-Am proposing both the Ryan Ranch intertie project and a moratorium in the Application, and, on the other hand, reaching a settlement that includes the Ryan Ranch intertie, but avoids a moratorium. They assert that there is no conflict because the Ryan Ranch intertie gives Cal-Am the flexibility to ramp down its Laguna Seca Subbasin production.<sup>36</sup> They note that the finding by the Watermaster Board was that Cal-Am is allowed by the Amended Decision to over pump its allocation basin-wide, subject to a RA with no differentiation as to production in the Laguna Seca Subarea versus the other subareas.<sup>37</sup> Further, they note that this gives Cal-Am the legal flexibility to continue pumping in the Laguna Seca Subbasin to meet Hidden Hills demand until it can be connected to the Monterey Main system.<sup>38</sup>

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<sup>33</sup> See, Joint Reply Comments at 2-3.

<sup>34</sup> *Id.* at 3.

<sup>35</sup> Permanent use of the Toro intertie with Hidden Hills would require special permitting, rate structures, and other complications. See, Attachment A to Lucido’s Response.

<sup>36</sup> See, Joint Reply Comments at 3.

<sup>37</sup> See, Joint Motion for Settlement, Exhibit B Jacques Declaration, Attachment B at 27 and Settlement Agreement Recital 6.

<sup>38</sup> See, Joint Reply Comments at 4.



- Access to Water from Carmel River Source prior to Lifting Cease and Desist Order – The Joint Parties note that Lucido appears to contend that the Settlement Agreement is unreasonable because it does not explain why the intertie between Ryan Ranch and the Monterey Main system in proceeding before the intertie between Hidden Hills and the Monterey Main system.<sup>39</sup> They also note that Cal-Am has consistently proposed proceeding with the Ryan Ranch intertie first and further state that as explained by Cal-Am and reflected in the Watermaster TAC minutes, Cal-Am plans to construct a separate intertie to serve the Hidden Hills unit from its Main System. After both interties are completed, Cal-Am would completely discontinue pumping from the Laguna Seca Subarea.<sup>40</sup> The Joint Parties also note that to be reasonable, a settlement agreement does not need to address and reject all alternative scenarios.<sup>41</sup>
- Laguna Seca Subarea Conservation – The Joint Parties state that the Settlement Agreement includes agreements to promote additional conservation outreach to Laguna Seca service area customers.<sup>42</sup> Further they note that although conservation is encouraged, nothing in Lucido’s Response is grounds for rejecting the Settlement Agreement without any explanation or citation to evidence in the record.
- Cal-Am’s Standard Production Allocation and Carryover – The Joint Parties deny that the Settlement Agreement ignores production allocations or other water constraints.<sup>43</sup> They state that Lucido’s Response incorrectly argues that the Watermaster and TAC Board did not address whether Cal-Am has sufficient water allocation

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<sup>39</sup> *Id.*

<sup>40</sup> *See*, Joint Motion Exhibit B, Jacques Declaration, Attachment C at 4.

<sup>41</sup> *See*, Joint Reply Comments at 4.

<sup>42</sup> *Id.* at 4-5.

<sup>43</sup> *Id.* at 5.



and is consistent with the Amended Decision.<sup>44</sup> They state that the Watermaster's Technical Program Manager examined Cal-Am's allocations and production and concluded Cal-Am's Carryover would be enough to cover the estimated production of the Hidden Hills unit alone.<sup>45</sup> Furthermore, they assert that it is the Watermaster TAC which found no adverse impacts and that the Watermaster TAC is in the best position to determine whether the plan memorialized in the Settlement Agreement will have an adverse impact on the basin.

- Overproduction After WY 2020 – The Joint Parties note that Lucido's Response makes this assertion without any reference to evidence in or outside of the record.<sup>46</sup> The Joint Parties note that long-term Cal-Am intends to supply all of its systems located with the Laguna Seca Subarea with water from the Main System, using all water sources in its portfolio.<sup>47</sup> In the meantime, Cal-Am intends to follow the plan for reducing production in the Laguna Seca Subbasin which is set forth in the Settlement Agreement starting with Ryan Ranch interconnection to the Main System.
- ASR Future Water Projections Not Thorough – The Joint Parties assert that Lucido's Response states that there is insufficient documentation to show that there is sufficient ASR water to meet or offset pumping in the Laguna Seca Basin in all future years. The Joint Parties note that no one can guarantee there will be sufficient ASR water in all future years because ASR water is rain dependent and subject to drought.<sup>48</sup> They note that requiring them to guarantee this is unreasonable.<sup>49</sup> Finally, they note that

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<sup>44</sup> *Id.*

<sup>45</sup> *See*, Joint Motion Exhibit B Jacques Declaration, Attachment at 22-23.

<sup>46</sup> Joint Reply Comments at 6.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 7.

Lucido's Response fails to point out any valid flaw in the Settlement Agreement and that the Settlement Agreement should be adopted.<sup>50</sup>

## **5. Commission Review of the Proposed Settlement Agreement**

The requirements for adopting a settlement are set forth in Rule 12.1(a) of the Commission's Rules of Practice and Procedure,<sup>51</sup> which states:

Parties may, by written motion any time after the first prehearing conference and within 30 days after the last day of hearing, propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding. Settlements need not be joined by all parties; however, settlements in applications must be signed by the applicant....

Rule 12.1(d) provides that:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

Rule 12.5 limits the future applicability of a settlement:

Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

Here, we therefore must determine whether the settlement complies with Rule 12.1(d), which requires a settlement to be "reasonable in light of the whole record, consistent with law, and in the public interest." In determining whether a proposed settlement is in the public interest, the Commission must be convinced

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<sup>50</sup> *Id.*

<sup>51</sup> All referenced Rules are the Commission's Rules of Practice and Procedure.

the parties had a thorough understanding of the application and all the underlying assumptions and data included in the record. As discussed below, we find that the Settlement Agreement is reasonable light of the record, in the public interest and consistent with the law.

The record consists of all filed documents, served and filed testimony, the proposed Settlement Agreement, the motion for its adoption, Lucido's Response to the proposed Settlement Agreement, and the Joint Parties Reply thereto.

Lucido's Response argues that the Settlement Agreement must be denied unless it avoids all future moratoriums. It also urges the Commission to add additional terms to the Settlement Agreement. The allegations set forth in the Response are not supported by the record. The Response also asserts that the Settlement Agreement is not reasonable considering the record primarily by asserting that there were facts that were not disclosed by the Application. However, Cal-Am's instant Application and the record of this proceeding, including testimony and additional documents filed with the Settlement Agreement sets forth the facts that Lucido contends were not disclosed.

Moreover, the Settlement Agreement would reduce pumping in the Laguna Seca Subbasin, encourage additional conservation efforts. Furthermore, the Watermaster TAC and the Watermaster Board found no adverse impacts would result from the plan set forth in the Settlement Agreement to reduce pumping in the Laguna Seca Subbasin.

We also find that the Settlement Agreement is consistent with the Amended Decision as well as Watermaster TAC and Board findings. The plan set forth in the Settlement Agreement is to ramp-down Cal-Am's production in the Laguna Seca Subbasin. This will benefit the basin and customers. The plan set forth in the Settlement Agreement also avoids a moratorium at the present

time, which benefits customers who desire an expanded connection and future customers that hope to obtain a new water service connection.

Cal-Am served notice of the all-party settlement meeting on April 7, 2020. Lucido was provided with a copy of the proposed terms of the Settlement Agreement at that time. On April 14, 2020, the all-party settlement meeting was held. Lucido was apprised of the settlement meeting and at the time of the settlement meeting he was still represented by legal counsel.

Cal-Am represents the utility and its shareholders in this proceeding. MPWMD was created by special legislation in 1977 and approved by voters in 1978<sup>52</sup>. MPWMD serves approximately 112,000 people in various cities in the Monterey County area.<sup>53</sup> MPWMD has established several goals for itself, two of which include assisting Cal-Am develop a legal water supply and protecting the quality of surface and ground water resources in the area it serves.<sup>54</sup> MPWMD's involvement in this proceeding represents the 112,000 people in various cities and furthered its internal goals of protecting the quality of surface and ground water.

The Settlement Agreement is the result of extensive and vigorous negotiations between Cal-Am and MPWMD. Cal-Am and MPWMD both have a thorough understanding of the issues and all the underlying assumptions and data and could therefore make informed decisions in the settlement process.

Lucido's Response fails to present any evidence to challenge the benefits described in the Settlement Agreement. Nor does it improve any of the benefits

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<sup>52</sup> See, [www.mpwmd.net](http://www.mpwmd.net)

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

presented in the Settlement Agreement. Therefore, we decline to make any of the changes suggested by Lucido in his Response.

Additionally, there are no terms within the Settlement Agreement that would bind the Commission in the future or violate existing law. We also note that there is a public policy favoring the settlement of disputes to avoid costly and protracted litigation.<sup>55</sup>

In summary, we find that the Settlement Agreement is reasonable light of the record, in the public interest and consistent with the law. Therefore, we find that it meets the applicable settlement standards of Rule 12.1(d) and 12.5 and should be adopted without any modifications. Adoption of the settlement is binding on all parties to the proceeding. However, pursuant to Rule 12.5, the settlement does not bind or otherwise impose a precedent in this or any future proceeding.

## **6. Safety Considerations**

Public Utilities (Pub. Util.) Code §451 requires that every public utility must maintain adequate, efficient, just, and reasonable service to promote the “safety, health, comfort, and convenience of its patrons, employees, and the public.” No party raised any safety-related concerns during this proceeding that were not adequately addressed. We have evaluated the Application and Settlement Agreement and are satisfied that the Application does not present any additional safety related concerns that need to be addressed.

## **7. Admission of Testimony and Exhibits into the Record**

Since evidentiary hearings were not held in A.19-07-005, there was no opportunity to enter prepared testimony and exhibits into the record. In the joint

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<sup>55</sup> D.88-12-083, 30 CPUC 2d 189, 221.

motion of Cal-Am and MPWMD filed on May 20, 2020, parties request the admission of the following:

<b>Exhibit</b>	<b>Description</b>
Cal-Am-1	Prepared Testimony of Cook, Dated July 2, 2019
MPWMD-1	Prepared Testimony of Lear, Dated October 30, 2019
MPWMD -2	Prepared Testimony of Locke, Dated October 30, 2019
MPWMD -3	Prepared Testimony of Stoldt, Dated October 30, 2019
Joint (Cal-Am/MPWMD) -1	Declaration of Jacques, Dated May 8, 2020
Lucido - 1	Prepared Direct Testimony of Lucido, Dated October 30, 2019 which was filed by Lucido with his Motion for Party Status.

Given the necessity of Cal-Am's, MPWMD's, and Lucido's testimony to our assessment of the proposals put forth, we mark, identify and admit into evidence all of the parties' Exhibits identified above.

## **8. Categorization and Need for Hearing**

In Resolution ALJ 176-3443, dated August 1, 2019, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary. In the Scoping Ruling, the assigned Commissioner stated that evidentiary hearings would be held, if necessary. Considering the adoption of the Settlement Agreement resolving all issues in this proceeding, hearings are not necessary. Therefore, we change our preliminary determination regarding hearings, to "no hearings are necessary."

## **9. Comments on Proposed Decision**

The proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

Comments were filed by \_\_\_\_\_ on \_\_\_\_\_.  
 Reply comments were filed by \_\_\_\_\_ on \_\_\_\_\_.

**10. Assignment of Proceeding**

Genevieve Shiroma is the assigned Commissioner and Gerald F. Kelly is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. Cal-Am is a Class A water utility subject to the Commission's jurisdiction.
2. A Settlement Conference was held among the parties in this proceeding.
3. Cal-Am and MPWMD reached a settlement on all issues in the scope of this proceeding as presented in the Application and MPWMD's Protest.
4. Cal-Am and MPWMD filed a joint motion to adopt the Settlement Agreement in this instant Application on May 12, 2020.
5. Lucido objected to the Settlement Agreement on June 18, 2020.
6. The proposals in the Settlement Agreement are the result of arms-length negotiations between the parties.
7. The parties to the settlement adopted by this decision have a thorough understanding of the issues and the underlying assumptions and data and could therefore make informed decisions in the settlement process.
8. The proposed Settlement Agreement is a balance between the original positions of the parties and their positions as otherwise posed in the prepared testimony of the parties.
9. Each of the issues resolved in the Settlement Agreement is addressed by evidence in the record.
10. Lucido's Response fails to present any evidence to challenge the benefits described in the Settlement Agreement. Nor does it improve any of the benefits presented in the Settlement Agreement.
11. All issues identified in the Scoping Ruling issued in this proceeding have been addressed and resolved in the Settlement Agreement.



**Conclusions of Law**

1. Rule 12.1(d) provides that the Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable considering the whole record, consistent with law, and in the public interest.

2. The proposed Settlement Agreement is reasonable considering the record because it fairly balances the interests of the utility and customers.

3. The Settlement Agreement is consistent with the law.

4. The Settlement Agreement is in the public interest.

5. Adoption of the Settlement Agreement is binding on all parties to the proceeding. However, pursuant to Rule 12.5, the settlement does not bind or otherwise impose a precedent in this or any future proceeding.

6. The Motion to adopt the Settlement Agreement should be adopted.

7. The Settlement Agreement adequately balances risks between the parties.

8. Lucido's request to reject the Settlement Agreement should be denied.

9. There is no need for evidentiary hearings for this proceeding.

10. The motion to admit all exhibits into the record should be granted.

11. All rulings issued by the assigned Commissioner and ALJ should be affirmed herein; and all motions not specifically addressed herein or previously addressed by the assigned Commissioner or ALJ, should be denied.

12. Given that no hearings are needed, the preliminary determination regarding hearings should be changed to "no hearings are necessary."

13. Application A.19-07-005 should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. The joint motion filed by California American Water Company and Monterey Peninsula Water Management District dated May 12, 2020, for the



adoption of the Settlement Agreement, is granted. The Settlement Agreement is attached as Appendix A and incorporated herein by this reference.

2. The Response of Joseph P. Lucido requesting that the Commission reject or change the Settlement Agreement is denied.

3. All rulings issued by the assigned Commissioner and Administrative Law Judge (ALJ) are affirmed herein; and all motions not specifically addressed herein or previously addressed by the assigned Commissioner or ALJ, are denied.

4. The determination made in Resolution ALJ 176-3433 that “hearings are necessary” is changed to “no hearings necessary.”

5. The following prepared testimony and declaration are marked, identified and received into evidence:

<b>Exhibit</b>	<b>Description</b>
Cal-Am-1	Prepared Testimony of Cook, Dated July 2, 2019
MPWMD-1	Prepared Testimony of Lear, Dated October 30, 2019
MPWMD -2	Prepared Testimony of Locke, Dated October 30, 2019
MPWMD -3	Prepared Testimony of Stoldt, Dated October 30, 2019
Joint (Cal-Am/MPWMD) -1	Declaration of Jacques, Dated May 8, 2020
Lucido - 1	Prepared Direct Testimony of Lucido, Dated October 30, 2019 which was filed by Lucido with his Motion for Party Status.

6. Today’s decision is effective immediately.

7. Application 19-07-005 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## **APPENDIX A**

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of  
California-American Water Company  
(U210W) for an Order Authorizing and  
Imposing a Moratorium on Water Service  
Connections in the Laguna Seca Subarea of  
its Monterey County District.

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Application No. 19-07-005  
(Filed July 2, 2019)

**SETTLEMENT AGREEMENT BETWEEN CALIFORNIA-AMERICAN WATER  
COMPANY AND MONTEREY PENINSULA WATER MANAGEMENT  
DISTRICT**

Christopher Cook  
California-American Water Company  
511 Forest Lodge Road  
Monterey, CA 93950  
Telephone: 831-646-3241  
Email: Christopher.Cook@amwater.com  
For: California-American Water Company

David J. Stoldt  
Monterey Peninsula Water Management  
District  
P.O. Box 85  
Monterey, CA 93942-0085  
Telephone: (831) 658-5600  
Email: DStoldt@mpwmd.net  
For: Monterey Peninsula Water  
Management District

Dated: April 15, 2020

### **Settlement Agreement A.19-07-005**

Pursuant to Article 12 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), California-American Water Company (“California American Water”) and the Monterey Peninsula Water Management District (“MPWMD”), to avoid the expense and uncertainty of litigation of the matters in dispute before the Commission, agree on the terms of this Settlement Agreement (“Agreement”), which they now submit for review, consideration and approval by the Commission. California American Water and MPWMD may be referred to collectively as the “Parties.” This Agreement is effective as of April 15, 2020.

#### **Recitals**

1. On July 2, 2019, California American Water initiated Commission proceeding A.19-07-005 (the “Proceeding”) by filing an application for a moratorium on new or expanded water service connections in the company’s Laguna Seca Subarea. California American Water sought the moratorium as part of an effort to comply with the withdrawal limitations set by the Seaside Groundwater Basin Adjudication, as reflected in Monterey County Superior Court Case No. M66343 (“Adjudication”) and the February 2007 Amended Decision (“Amended Decision”) in that proceeding. California American Water’s Laguna Seca Subarea consists of its Ryan Ranch, Bishop and Hidden Hills systems.
2. For California American Water and other producers, the Amended Decision required reduction in Seaside Groundwater Basin (“Basin”) production over a fifteen-year period in order to prevent adverse impacts to the Basin. Specifically, California American Water’s authorized pumping allocation for the Laguna Seca Subarea was reduced to zero in 2018.
3. On August 7, 2019, MPWMD submitted a Protest, and on October 30, 2019, MPWMD submitted testimony challenging the need to implement a moratorium.
4. On October 30, 2019, Joseph Lucido filed a motion for party status and served testimony, which also challenged the need to implement a moratorium.
5. On January 8, 2020, the Seaside Groundwater Basin Watermaster, charged with administering and enforcing the provisions of the Amended Decision, held a Technical Advisory Committee (“TAC”) meeting. At the meeting, California American Water presented a plan to avoid a moratorium in the Laguna Seca Subarea. During the TAC meeting, a motion was made, seconded, and unanimously approved stating that: (1) the TAC does not identify any adverse impacts associated with California American Water’s planned schedule for phasing out its pumping from the Laguna Seca Subarea, and therefore does not see any reason to object to it from a technical basis, and (2) the TAC recognizes that continued pumping at current rates until the intertie to California American Water’s Main System is constructed is an interim condition that would not necessitate imposing a moratorium on new or expanded service in the Laguna Seca Subarea.
6. On February 5, 2020, the Seaside Groundwater Basin Watermaster Board of Directors held a meeting. California American Water, MPWMD and Mr. Lucido participated in the meeting. After a presentation of the issues, the Board made the following findings:

(1) the Amended Decision provides for Producers to over pump their allocations by levying a Replenishment Assessment on the amount of such over pumping;

(2) California American Water is allowed by the Amended Decision to over pump its allocation basin-wide, subject to a Replenishment Assessment, with no differentiation as to production in the Laguna Seca Subarea versus the other subareas;

(3) the Watermaster does not identify any adverse impacts associated with California American Water's planned schedule for phasing out its pumping from the Laguna Seca Subarea, and therefore does not object to it; and

(4) the Watermaster recognizes that California American Water's continued pumping from the Laguna Seca Subarea at current rates until the interties to California American Water's Main System are constructed is an interim condition that would not necessitate imposing a moratorium on new or expanded service in the Laguna Seca Subarea.

7. This Agreement, if adopted by the Commission, would provide a compromise resolution of this proceeding and avoid the uncertainty of a continued challenge as well as unnecessary costs to ratepayers. The Agreement would do so while resolving the need for a moratorium at this time.

### **Agreement**

NOW, THEREFORE, as a COMPROMISE and SETTLEMENT of the above-stated dispute, and to provide an efficient and effective resolution of this dispute, the Parties do hereby AGREE to the following terms.

1. The Amended Decision provides for Producers to over pump their allocations by levying a Replenishment Assessment on the amount of such over pumping.
2. California American Water is allowed by the Amended Decision to over pump its allocation basin-wide, subject to a Replenishment Assessment, with no differentiation as to production in the Laguna Seca Subarea versus the other subareas.
3. The Parties are not aware of any adverse impacts associated with California American Water's planned schedule for phasing out its pumping from the Laguna Seca Subarea, and therefore do not object to it.
4. The Parties recognize that California American Water's continued pumping from the Laguna Seca Subarea at current rates until the interties to California American Water's Main System

are constructed is an interim condition that would not necessitate imposing a moratorium on new or expanded service in the Laguna Seca Subarea at this time.

5. In lieu of continuing to seek authorization for imposition of a moratorium, and based on this Agreement, California American Water will pursue the following plan.
  - a. In a normal year with Aquifer Storage and Recovery water available, California American Water will pump groundwater from the Coastal Subbasin and deliver that groundwater for use in the Laguna Seca Subbasin, consistent with Section III.M.3.a., pp. 42-43 of the 2007 Amended Decision.
  - b. Specifically, once the Main System/Ryan Ranch intertie project is complete, California American Water will supply the Ryan Ranch and Bishop service areas with water produced from the Coastal Subarea of the Basin, consistent with California American Water's allocation for the Coastal Subarea.
  - c. California American Water will use its Standard Production and Carryover from its Laguna Seca Sub-basin allocation to meet or offset its Hidden Hills pumping.
6. Conservation
  - a. California American Water agrees to research and remediate why the non-revenue water percentages in its Laguna Seca Subarea are higher than its Monterey Main System.
  - b. California American Water agrees to put signage rings on its fire hydrants in its Laguna Seca Subarea.
  - c. California American Water and MPWMD agree to jointly sponsor a workshop for California American Water's Laguna Seca customers on irrigation and efficient outdoor water use.
  - d. California American Water agrees to promote to California American Water's Laguna Seca customers California American Water's and MPWMD's existing joint rebate program, with an emphasis on turf removal.
  - e. California American Water agrees to promote its Water Wise House Call program to its Laguna Seca customers.
7. Nothing in this Settlement Agreement precludes or is intended to preclude California American Water from seeking authorization to impose a moratorium in the Laguna Seca Subarea in the future. The Parties agree any dismissal of the Proceeding should be without prejudice.
8. The Parties understand and agree that this Agreement is a compromise settlement of disputed claims, and that the promises in consideration of this Agreement shall not be construed as an admission of any liability or obligation whatsoever by any Party.

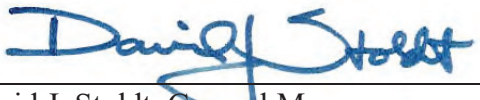
9. Each of the Parties represents and warrants that they have read the Agreement and have had the opportunity to solicit the advice of counsel before entering into and executing this Agreement. For purposes of construction, this Agreement shall not be deemed to have been drafted by any Party, and any ambiguity shall not be construed against any party.
10. Each Party to this Settlement Agreement represents and warrants that it has the capability and authority to carry out the rights and obligations of this Settlement Agreement. Each person whose signature appears hereon represents and warrants that he/she has been duly authorized and has full authority to execute this Settlement Agreement on behalf of the Party on whose behalf this Settlement Agreement is executed.
11. This Settlement Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have duly authorized this Agreement to be executed.

Dated: April 15, 2020

By: \_\_\_\_\_  
Christopher Cook, Director of Operations  
For: California-American Water Company

Dated: April 15, 2020

By:  \_\_\_\_\_  
David J. Stoldt, General Manager  
For: Monterey Peninsula Water Management  
District

9. Each of the Parties represents and warrants that they have read the Agreement and have had the opportunity to solicit the advice of counsel before entering into and executing this Agreement. For purposes of construction, this Agreement shall not be deemed to have been drafted by any Party, and any ambiguity shall not be construed against any party.
10. Each Party to this Settlement Agreement represents and warrants that it has the capability and authority to carry out the rights and obligations of this Settlement Agreement. Each person whose signature appears hereon represents and warrants that he/she has been duly authorized and has full authority to execute this Settlement Agreement on behalf of the Party on whose behalf this Settlement Agreement is executed.
11. This Settlement Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have duly authorized this Agreement to be executed.

Dated: APRIL 15<sup>th</sup>, 2020

By: \_\_\_\_\_

Christopher Cook, Director of Operations  
For: California-American Water Company

Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_

David J. Stoldt, General Manager

For: Monterey Peninsula Water Management  
District